

REMARKS

Claims 1-21 are currently pending in the case. Further examination and reconsideration of the presently claimed application are respectfully requested.

Objection to Affidavit

The Office Action states that the Declaration filed on April 27, 2005 under 37 CFR 1.131 was ineffective to overcome U.S. Patent No. 6,721,944 to Chaudhry et al. (hereinafter "Chaudhry"). Specifically, the Examiner alleges that the Declaration must establish a conception of the invention prior to the effective date of the Chaudhry reference. The Examiner also alleges that the Declaration must establish diligence from a date prior to the effective date of Chaudhry.

In response thereto, a revised Declaration under 37 CFR 1.131 is submitted hereto with this paper. Applicants believe that the revised Declaration provides sufficient evidence in support of establishing a prior invention under 37 CFR 1.131(b), as set forth in MPEP 715.07. Specifically, an "Applicant can show an earlier invention by merely demonstrating conception of the invention prior to the effective date of the reference coupled with due diligence from prior to the reference date to the filing date of the application" (MPEP 715.07).

As set forth in the revised Declaration attached herewith, the Invention Disclosure form provides sufficient evidence of conception prior to the effective date of Chaudhry. For example, the revised Declaration clearly specifies that evidence of the claimed subject matter may be found on page 4 of the Invention disclosure. Moreover, as set forth in the revised Declaration, Applicant states that he was duly diligent "from at least a time just prior to May 31, 2000 through the filing of the application on April 3, 2001 . . ." In particular, the revised Declaration makes clear that the Applicant "continued to work on [the] claimed invention . . . by building, testing, experimenting with, and generally improving the operation of [the] invention throughout the critical period prior to May 31, 2000 to when Mr. Daffer filed the application on April 3, 2001. After performing the mental steps required to conceive the invention, the inventive concepts were translated into source code, followed by testing and debugging procedures to optimize the code during the critical time period." Furthermore, the Applicant states that he "did not abandon, suppress, or conceal the ideas set forth in the claimed invention during at least a time beginning prior to May 31, 2000 through the filing of application on April 3, 2001."

For at least these reasons, Applicant respectfully requests that Chaudhry be removed as prior art against the captioned application.

Section 102 Rejection

Claims 8, 9, 12, 14, and 21 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,438,746 to Martin (hereinafter "Martin"). The standard for "anticipation" is one of fairly strict identity. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. Of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987), MPEP 2131. Martin does not disclose all limitations of the currently pending claims, some distinctive limitations of which are set forth in more detail below. As such, the current rejection is hereby respectfully traversed.

Martin fails to disclose a computer program including text, which is preceded by a comments designator and succeeded by at least one link word that is adapted for modification by an on-screen pointer. Independent claim 8 recites in part, "A computer-usable carrier medium comprising a computer program, wherein the computer program comprises: a first text preceded by a comments designator and succeeded by at least one link word that is adapted for modification by an on-screen pointer... ." In this manner, independent claim 8 discloses one manner in which a comments portion within a program may be modified (e.g., by modifying a link word within the comments portion using an on-screen pointer).

Statements in the Office Action suggest that "Martin teaches [a] method comprising a first text preceded by a comments designator (part 1000b in Fig. 9) and succeeded by [a] link word (col 10, lines 9-16) that is adapted by modification by an on-screen pointer (col 5, lines 51-60)" (Final Office Action, page 3). The Applicant respectfully disagrees, for at least the reasons set forth in more detail below.

Though Martin discloses a comments portion of a computer program (e.g., portion 1000b of Fig. 9), where the comments are preceded by a comments designator (e.g., the // symbol shown in Fig. 9), Martin does NOT disclose that the comments designator may be succeeded by a link word that is adapted for modification by an on-screen pointer. The Examiner suggests that teaching for the presently claimed link word, which is adapted for modification by an on-screen pointer, can be found in column 5, lines 51-60 and column 10, lines 9-16 of Martin. Upon review of these passages, Applicant's assert that there is

absolutely no mention of a link word, an on-screen pointer, or a link word adapted for modification by an on-screen pointer within the passages cited by the Examiner, or anywhere else within Martin.

In the Final Office Action, the Examiner maintains the assertion that the “=” signal shown in FIG. 9 of Martin can somehow be interpreted to read upon the presently claimed “link word”. The Applicant disagrees. Even though an “=” symbol may be embedded within a comments portion (presumably, as text entered by a user), Martin does NOT teach or suggest that the “=” symbol could be modified by an on-screen pointer. Instead, Martin teaches that the “=” symbol is merely an assignment symbol, which assigns specification data (e.g., 99%) to some functional criteria (e.g., availability). See, e.g., FIG. 9 and corresponding text of Martin.

Applicants recognize the need to give the claims the broadest reasonable interpretation during the examination process. However, as set forth in MPEP 2143.03, “all words in a claim must be considered when judging the patentability of that claim against the prior art.” *In re Wilson* 424 F.2d., 1382 (CCPA 1970). By merely suggesting that an “=” symbol can be interpreted as a “link word,” the Examiner fails to consider all words recited in present claim 8. Though the Examiner suggests that “[s]ince the comment is text entered by a user, each word of the comment (including =) can be modified,” the Examiner provides no evidentiary support within Martin that would enable one skilled in the art to conclude that the “=” symbol of Martin could somehow be modified by an on-screen pointer, as specifically recited in present claim 8.

For at least the reasons noted above, Martin simply fails to anticipate all limitations of present claim 8. Therefore, claim 8 and all claims dependent therefrom are asserted to be patentably distinct over the cited art. Accordingly, Applicants respectfully request that the §102(c) rejection of claims 8, 9, 12, 14 and 21 be removed.

Section 103 Rejections:

Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Martin in view of U.S. Patent No. 6,026,233 to Shulman et al. (hereinafter “Shulman”). Claim 13 was rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of U.S. Patent No. 4,541,048 to Propster et al. (hereinafter “Propster”). As set forth in more detail below, the §103(a) rejection of claims 10, 11 and 13 is hereby respectfully traversed.

As noted above in the §102 arguments, Martin (i.e., the primary reference) fails to teach or suggest all limitations of independent claim 8. Since claims 10, 11 and 13 depend from claim 8, claims 10, 11 and 13 are patentably distinct over Martin for at least the same reasons noted above for the patentability of claim 8. Therefore, no combination of Martin and the remaining cited art can be used to render claim 8 (or the combined limitations of claim 8 and any of its dependent claims) unpatentable. Accordingly, removal of the §103(a) rejection of claims 10, 11 and 13 is respectfully requested.

Claims 1-4 and 15-20 were also rejected under 35 U.S.C. §103(a) as being unpatentable over Martin in view of U.S. Patent No. 6,721,944 to Chaudhry et al. (hereinafter "Chaudhry"). In addition, claim 5 was rejected under 35 U.S.C. §103(a) as being unpatentable over Martin, Chaudhry and Shulman, while claims 6-7 were rejected for being unpatentable over Martin, Chaudhry and Propster. As set forth in more detail below, removal of the §103(a) rejection of claims 1-7 and 15-20 is respectfully requested.

Chaudhry cannot be combined with Martin to provide teaching or suggestion for creating a data set by modifying a comments portion of a program, where the step of modifying includes activating a user-selectable link embedded within the comments portion. Independent claim 1 states, in part, "[a] method for generating computer executable code, comprising: creating a data set by modifying a comments portion of a program, wherein said modifying comprises activating a user-selectable link embedded within the comments portion...." Independent claim 15 (an apparatus) recites a similar limitation by including "a compiler for generating a data set ... in response to user-activation of a link within a comments portion of a program".

With regard to claims 1 and 15, the Examiner agrees that "Martin differs from the claim in that Martin does not teach the data set is created by modifying a comments portion of a program" (Final Office Action, pages 5 and 7). In regards to claim 1, the Examiner agrees that Martin also fails to teach that such modification is performed "by activating a user-selectable link embedded within a comments portion." (Final Office Action, page 5). However, the Examiner suggests that such features are taught by Chaudhry. For example, the Examiner suggests that Chaudhry teaches a system that allows a programmer to select, modify, and insert hints (i.e., comments) into the source code that causes the compiler to generate executable code (see, Final Office Action, page 5, and Chaudhry, col. 2, lines 31-45 and 55-59).

First of all, Applicants wish to point out that Chaudhry is not available as prior art against the current application. To expedite prosecution, a revised declaration under 37 C.F.R. § 131 is filed in a separate paper hereto with this response. The revised declaration provides sufficient evidence to establish an invention date prior to May 31, 2000 for the subject matter of the current claims. The revised Declaration also provides sufficient evidence to prove that the due diligence was practiced from at least a time prior to May 31, 2000 to the filing date of the application on April 3, 2001. Because Chaudhry was filed provisionally on May 31, 2000, it is not available as prior art under 35 U.S.C. §103(a) against these claims. Accordingly, removal of the 103(a) rejection of claims 1-7 and 15-20 is respectfully requested.

Even though Chaudhry is not available as prior art, Applicants wish to point out that the teachings of Chaudhry (which merely insert comments into source code) cannot be relied upon to provide teaching or suggestion for "creating a data set by modifying a comments portion of a program," as recited in claims 1 and 15. Although Chaudhry suggests that "hints" may be inserted into the source code (e.g., to specify that a speculative thread is not to mark a given memory element during a given read operation), Chaudhry does NOT teach or suggest that the "hints" can be modified to create a data set. For at least this reasons, Chaudhry fails to provide teaching or suggestion for "creating a data set by modifying a comments portion of a program", as recited in present claims 1 and 15.

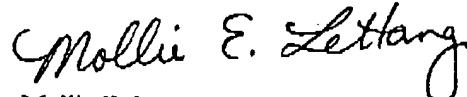
In addition, Chaudhry fails to provide teaching, suggestion or motivation for "modifying a comments portion of a program by activating user-selectable links embedded within the comments portion," as further recited in claim 1. In particular, Chaudhry fails to mention the use of links, user-selectable links or any other type of link that may be embedded within a comments portion and activated for modifying a data set. In other words, the "hints" disclosed by Chaudhry are not described as being "user-selectable" or capable of being "activated." Furthermore, the Examiner agrees that absolutely no teaching, suggestion or motivation for the presently claimed "user-selectable links" can be found within the primary reference to Martin. Therefore, Applicants assert that even if Chaudhry were combined with Martin, the combined teachings of the cited art would still fail to provide teaching or suggestion for "creating a data set by modifying a comments portion of a program, wherein said modifying comprises activating a user-selectable link embedded within the comments portion," as recited in present claim 1.

CONCLUSION

This response constitutes a complete response to the issues raised in the final Office Action mailed July 28, 2005. In view of remarks traversing rejections, Applicants assert that pending claims 1-21 are in condition for allowance. If the Examiner has any questions, comments, or suggestions, the undersigned earnestly requests a telephone conference.

No fees are required for filing this amendment; however, the Commissioner is authorized to charge any additional fees, which may be required, or credit any overpayment, to Daffer McDaniel, LLP Deposit Account No. 50-3268/5298-05300.

Respectfully submitted,



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